

# AN INSTITUTIONAL EVALUATION OF LOBBYING IN SPAIN: ANALYSIS AND PROPOSALS

## EXECUTIVE SUMMARY

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# SUMMARY OF FINDINGS

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The report “*An institutional evaluation of lobbying in Spain: Analysis and proposals*” examines the state of lobbying in Spain, showing that important public decisions are taken behind a veil of secrecy. Due to insufficient controls on lobbying, **it is almost impossible for the public to know who is influencing which decision-makers, by what means and with what effect.**

Lobbying is understood as any attempt to influence public policy decisions in an orderly and systematised way. In particular, this report dissects the transparency, integrity and equality of access in lobbying practices across different sectors in Spain, with a focus on the energy, health, financial, telecommunications and public works sectors. This report presents a series of recommendations for improving transparency, promoting integrity and levelling the playing field.

In Spain, it is **a widely held belief that money buys influence in politics**. Similarly, the perception that business and corruption go hand in hand is also widespread (*EU Anti-Corruption Report*, European Commission 2014). According to the 2013 Eurobarometer, **77% of Spaniards believe that corruption is part of the country’s business culture**, while 67% believe that the only way to succeed in business is through political connections. Moreover, a staggering 84% of people believe that bribery and connections are the easiest way to obtain public services.

These perceptions are even higher among companies – 91% of which see excessive links between money and politics, while 93% think that corruption and favouritism hurt business (*Flash Eurobarometer 374*, European Commission 2014). Businesses cite as commonplace many practices that are unfair, and sometimes illegal, such as favouring friends and family when conducting business, nepotism and clientelism in the public administration, and opaque political party financing. It is not surprising that trust in government is alarmingly low.

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While bribery and influence peddling scandals have continued to make headlines on the front page of newspapers and magazines over the past decade, there is a widespread awareness that some large corporations and interest groups unjustly influence political decision-making (although not always by illegal means). Examples include political party financing, using the “revolving door” and even threatening divestment to stop necessary regulatory changes.

The lack of clarity around what lobbying entails, as well as the lack of democratic controls regulating lobbying practices, can often lead to mistaking “lobbying” with “influence peddling”. While lobbying presupposes a certain level playing field, influence peddling, on the other hand, is an abuse of power out of which benefits are drawn.

Thus, the state of lobbying in Spain as well as the ongoing corruption scandals create an

uneasy feeling that the playing field is not even and that the decision-making process is biased in several policy areas, in favour of the most economically powerful. The perceived and actual prevalence of corrupt practices between business and politics fuels a bad image of lobbying. While this activity can be a crucial component of democratic societies – allowing various interests to be heard and bringing very positive elements to decision-making processes – today lobbying carries largely negative connotations amongst the general public.

## OVERVIEW AND SECTORAL ANALYSIS OF LOBBYING

This report finds that there are weak points in lobbying policy, legal loopholes and inadequate legislation, focusing on three key areas: transparency, integrity and equality of access to public officials. In these three areas, Spain scores well below what would be desirable, with an incredibly **low overall score of 21%**.

The worst area, and one which most urgently requires improvement, is **transparency** in lobbying (10%) – both by public authorities (access to information, mandatory registration of lobbyists and sanctions, legislative footprint) and by those who exercise lobbying (information disclosure).

The **integrity** of lobbying gets a score of 35%. The analysis shows that Spain has laws in place concerning pre- and post-public employment restrictions and codes of conduct for politicians and senior representatives, but that they are not met at all times. Moreover, there is no official code of conduct for lobbyists, and self-regulation is under development but still insufficient.

With regard to the **equality of access** of citizens and interest groups to public officials, Spain gets a score of 17%. This refers to consultation and public participation in decision-making processes, as well as to the balanced composition of expert groups and advisors. The formal reality allows and ensures, within limits, that legally recognized organizations are able to influence certain areas of decision-making, but yet a great informality persists in the way that other sectoral and focused groups practice lobbying. The latter mentioned area of informal influence is where the vast majority of cases of undue influence, and even corruption, occur.

Furthermore, the report showcases examples in different sectors related to corruption risks and bad or unethical practices, such as:

<ul style="list-style-type: none"> <li>• Financing of political parties</li> </ul>	<i>Case 7: Financing of political parties and infrastructures; Case 9: El Musel Port</i>
<ul style="list-style-type: none"> <li>• Lack of access to information and transparency in decision-making processes</li> </ul>	<i>Case 1: Financial sector: Public lobbying in the Savings banks; Case 2: Health Sector; Case 3: The influence of energy companies; Case 5: The Intellectual Property Act; Case 6: The Bankia case</i>
<ul style="list-style-type: none"> <li>• Lack of consultation and participation in decision-making</li> </ul>	<i>Case 3: The influence of energy companies; Case 5: The Intellectual Property Act; Case 10: Digital</i>

	<i>Terrestrial Television Licensing</i>
<ul style="list-style-type: none"> <li>• Regulatory and technical capture</li> </ul>	<i>Case 2: Health Sector; Case 3: The influence of energy companies; Case 4: Closing the Garoña nuclear facility; Case 6: The Bankia case</i>
<ul style="list-style-type: none"> <li>• Conflicts of interest and compatibilities</li> </ul>	<i>Case 9: El Musel Port</i>
<ul style="list-style-type: none"> <li>• Revolving doors</li> </ul>	<i>Case 8: Revolving doors in the energy and food industries in Spain</i>

The report also shows two examples of good practice in lobbying, in particular:

<ul style="list-style-type: none"> <li>• Consultation and participation in decision-making</li> </ul>	<i>Case 2: Health Sector: Adoption of the anti-tobacco legislation</i>
<ul style="list-style-type: none"> <li>• Balanced composition of experts groups and advisory bodies</li> </ul>	<i>Case 11: Good practices in the health sector: expert committees</i>

## TOWARDS LOBBY REGULATION

Are our laws sufficient to curb corruption and undue influence in lobbying practices? We cannot help but note gaps in legislation on conflicts of interest, political party financing, transparency, accountability and criminal law itself, which, for example, contains no crime linked to the illegal financing of political parties. Absent also are strong and effective regulations that protect whistleblowers reporting corruption. These fundamental regulatory shortcomings on the government side need to be addressed alongside any specific regulations on lobbying in Spain, in order to control corruption and malpractices.

For the majority of politicians in Spain, the regulation of lobbying remains a pending issue. The lack of regulation can explain why, according to a survey by Burson-Marsteller and Cariotipo MH5, **46% of politicians surveyed consider opacity the most negative aspect of lobbying practices**, compared to 26% among their European counterparts. As evidence that lobbying is prevalent in Spain, 56% of politicians surveyed say that they have talked with lobbyists and they do it because it is their duty to do so. Despite the negative images associated with lobbying, 86% concluded that lobbying does indeed contribute to policy development.

The government is currently working on regulation of lobbying, but the proposal is limited to a register of lobbyists in the Congress of Deputies. This was announced by the Government in June 2013, although since then there have been no official statements on it. However, information was made public from the Congress. On 25 and 26 February 2014, the full House

of Representatives passed a resolution promoted by the Parliamentary Group CiU<sup>1</sup> and agreed with the majority People's Party (PP) in which lobby regulation is included in point 5:

*"It is considered necessary to promote, as part of the reform of the Rules of the House of Representatives, greater immediacy, proximity and effectiveness of parliamentary scrutiny, and contemplate the regulation of so-called lobbies. Such regulation should be directed to channel the exercise of all activities intended to influence the formulation of policies and decision-making processes, ensuring transparency in the exercise of the right of representatives of civil society and businesses to have access to institutions, as well as observe the code of conduct that will eventually be approved."*

This was also agreed by the two lobby associations, the corporate Forum for Transparency (Foro por la Transparencia) and the Professional Association of Institutional Relations (APRI), the association representing professional lobbyists in Spain which has advocated for regulation since 2007, not least because of the commercial benefits that it could provide them. According to calculations by the latter association, after its creation, the register could enroll about 500 people, associations, employers, unions and NGOs. In addition, the regulation proposed by CiU refers to the need to adopt a code of conduct, which goes beyond the initial objectives of the executive.

The agreement would mean significant progress in the field, even though the most consequential lobbying activity that takes place in Spain is not in the legislature but the executive and the leadership of the major parties – which have acquired a leading role in political life. The key to understanding this fact is that Parliamentary elections are held with closed and blocked lists of candidates. This gives party leaders an enormous power over their elected representatives, who are, once in Parliament, following the instructions of the party rather than the demands and preferences of their voters in the relevant constituency (a constituency that is also very broad). Therefore, trying to influence an MP in Spain is a less effective effort than targeting the party leadership. Equally fruitful for lobbyists are lobbying activities directed toward the executive– especially when a party has an absolute majority – so that it can clearly determine the result of a vote in Parliament. Given the decentralized nature of the Spanish state, this argument could be repeated for regional governments and parliaments. Thus **any regulation that focuses solely on the legislature will miss the point, capturing only a fraction of the actual lobbying that takes place vis-à-vis decision-makers in Spain.**

## CONCLUSIONS AND RECOMMENDATIONS

Concerning the participation of interest groups, due to Spain's legislative framework, exerting influence has created a dual reality. On the one hand, there are models that are institutionalized to a greater or lesser extent which incorporate different representation and participation criteria. Certain organizations, such as trade unions, employer associations, Professional associations or Chambers of Commerce, play a quasi-institutionalized role in the definition of the general interest, along with the State. More than 600 norms regulate the formal

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<sup>1</sup> A two-party centre-right Catalan nationalist coalition

participation of organized interest groups in different policy areas, and, in turn, networks of interest groups and governments are created in different sectors through diverse institutional participatory mechanisms (e.g. the Women's Council, the Youth Council, the Economic and Social Council, the Environmental Evaluation Council, the Consumers and Users Council, etc.). All of these councils receive the participation of the parties at stake and, as a result, representative of employer associations and unions are guaranteed an institutional position to express their opinions on the issues and policies that affect them.

Alongside this formal reality, **there is a degree of informality** in which hundreds of professional lobbyists, companies and diverse interest groups try to influence the executive and legislative branches in a world where there are no rules to regulate their access, information on their contacts, the ethical limits of their work, or even a record of meetings. There have been cases of "legal" corruption and undue influence, and corruption is perceived to be a major problem in Spain yielding, as a result, strong disaffection in society. This leads us to worry about the opacity with which, in very important areas, lobbyists conduct their activities – especially given the lack of information and lack of regulation which would allow one to know who influences whom, how, with which financial means, and with what results. There is no record of lobbyists, lobbyists are not required to report their activities, there are no bodies monitoring and controlling their activity, and, as if that were not enough, there is insufficient legal and institutional support to keep track of the legislative footprint of our laws.

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The lack of information and the bad practices contribute to the fact that the image of lobbying is under suspicion and remains negative in Spain, even despite there being no known cases where professional lobbyists have been involved in corruption.

**To improve trust in government and reduce perceptions of corruption, several policy measures are underway, one of them being the proposed regulation of lobbyists.** Unfortunately, the current proposal is extremely conservative and does not seem to address the key issues and risks related to lobbying, as it focuses only on a register within Parliament, does not include lobbyists' activity reports, and leaves undefined the code of conduct for lobbyists. We will have to wait for Parliamentary debates to see what finally emerges from the legislature.

From the perspective of senior officials and public representatives, a range of measures concerning ethics are foreseen which do not substantially change the rules on conflicts of interest, although they do improve the regulation of party financing as well as introduce the crime of illegal financing.

In December 2014, **the Transparency Act will fully enter into force for the State level** (not for sub-national governments). This law is expected to reduce space for government opacity and help better control the activity of public authorities, especially thanks to some of the regulatory changes being passed in the Autonomous Communities. An example is that of Andalusia, which requires greater publicity of institutional agendas of governments. Meanwhile,

Transparency International and other NGOs push for more stringent regulations to effectively prevent corruption, increase transparency, ensure integrity and, to the extent possible, ensure political equality in public decision-making. This report aims to be a step in that direction.

**In the light of this analysis, TI Spain recommends** the following measures:

### **Registration and Disclosure measures**

1. The government must conduct a comprehensive review of lobbying risks in order to inform the introduction of a regulation of lobbying of the executive and legislative branches. The review must clarify the rules of the game and define who will receive special protection – for constitutional reasons – when exerting influence, noting who will have this protection, due to relevance to a specific sector, and who will not. This will guarantee a level playing field as well as transparency of the roles and responsibilities taken on.
2. Both Governments and Parliaments should initiate a broad consultation on introducing a register of lobbyists, involving all stakeholders who would be affected by such a register. Any register that is introduced must a) be mandatory and capture all who lobby professionally (anyone who is seeking to exercise influence including for instance not only professional lobbyists, but also private sector representatives [in-house lobbyists], public affairs consultancies, representatives from NGOs, corporations, industry/professional associations, trade unions, think tanks, law firms, faith-based organisations and academics) and b) cannot be built exclusively to regulate access to the national legislative branch – it must also regulate lobbying of regional Parliaments and the executive branch.
3. Public representatives and officials should clearly report contacts maintained with regard to every policy or political measure, and publicly inform about their work agenda. Public representatives (deputies, senators and local representatives) should publish their agendas and calendars.
4. All registered lobbyists should furnish periodic public reports on their activities, without prejudice to the information that the public officials with whom they meet should provide. They should clearly establish the public officials involved, their classification and the units where the work, the topic on which they sought to influence, the amounts received for this task, or, if a company is exercising influence on its own behalf, the relevant budget, etc.
5. A lobbying Code of Ethics should be introduced, setting clear ethical standards with regard to communicating with and seeking to influence public officials and representatives. Both lobbyists and those targeted by lobbyists and interest groups should be trained on the Code of Ethics.

6. There should be an independent entity or agency that manages the registration system and monitors and sanctions non-compliance, both in the private as well as the public sector (it can be of new creation or an already existing entity that is reorganized to assume this task).

### **Broader Public Sector Integrity measures**

7. The Transparency Act should be fully implemented and, when possible, amended to include greater access to public officials' agendas and the criteria for selecting consulting experts, as well as to enable citizen participation in drafting bills and regulations. The implementation of the act must be closely monitored.
8. The impartiality and independence of the Conflicts of Interest Office should be guaranteed so that the Conflicts of Interest and Incompatibilities Act (which only affects the executive branch) can be applied in a serious and rigorous fashion. This recommendation should be extended to other units, entities, agencies or authorities especially in charge of managing and monitoring conflicts of interest at the autonomous community and local levels, who must also have sufficient resources to effectively do their job.
9. The regulation on incompatibilities of senior officials should be guaranteed, in particular the 2-year cooling-off period. After the cooling-off period, a supervision should be ensured to prevent undue influence and influence peddling. The regulation on this matter should also apply to independent advisors in public company administrative councils, state attorneys or financial inspectors. It is important to regulate the process by which the private sector hires public officials from entities that are particularly well-prepared and have privileged information and contacts, such as state attorneys or financial inspectors. Their re-entry into the public arena should be closely monitored, and a hold should be placed on this re-entry in areas where conflicts of interest could occur.
10. The regulation of the process to draft bills and regulations should be reviewed to ensure a level playing field between all interests at stake for each regulated matter. More participation from all interested stakeholders is needed, as well as more information on the consultation and participation mechanisms, more timely information provision, enhanced channels of communication between citizens and the governments/parliaments, and mandatory impact assessments. The legislative technique and the quality of mandatory impact reports should also improve (in particular through the reform of the Government Act and Administrative Procedure Act).
11. A legislative footprint should be introduced which would provide a clear record of the information considered during legislation drafting and detailed record of the legislative process, including the meetings held by deputies and senators with third parties.
12. Conflicts of interest in the Parliamentary system and revolving doors should be more controlled, through proper review of Parliament members' income and assets

statements, and rigorous oversight of any incompatibilities and conflicts of interest. Furthermore, a code of ethics should be established whereby it is forbidden to accept gifts.

13. In the judicial branch and for the Public Prosecutor's Office, bans on post-public employment positions should be clearly regulated, and conflicts of interest should be more specifically monitored (for instance, through mandatory assets and income declarations).

### **Political Parties**

14. Political parties should be barred from cancellation of debt by the banks.
15. Political donations by businesses should be banned. In order to close loopholes in the political financing laws, financing of foundations and other entities tied to the parties should be monitored more closely, with the same limits established for political parties. In particular it should be forbidden for political party foundations to receive donations from companies that have contracted with public administrations.

# QUANTITATIVE RESULTS

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In quantitative terms, the report shows a negative result as to the status of lobby in Spain. The overall score is 21%. The assessment of lobby in the various aspects or categories shows a score of 10% in transparency, 35% in integrity and 17% in equality of access.

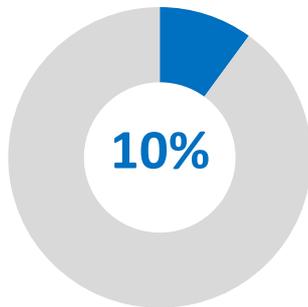
The questionnaire of 65 questions seeks to address the following questions:

**How well is Spain insulated against unfair and opaque lobbying?**

**How strong are mechanisms to ensure transparency, integrity and equality of access to public decision-makers?**

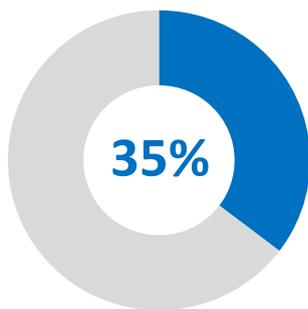
CATEGORY	VALUE
Transparency	10%
Integrity	35%
Equality of Access	17%
<b>Overall score</b>	<b>21%</b>

## TRANSPARENCY



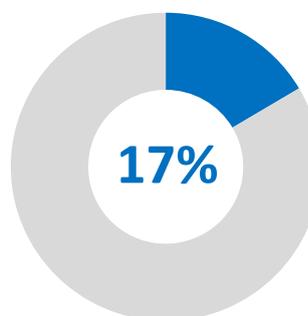
Access to information	<b>33%</b>
Registration and Disclosure by Lobbyists	<b>7%</b>
Oversight of Register and Sanctions	<b>0%</b>
Legislative Footprint	<b>0%</b>

## INTEGRITY



Post-employment and pre-employment restrictions	<b>58%</b>
Code of conduct for Public Sector employees	<b>58%</b>
Code of Conduct for Lobbyists	<b>0%</b>
Self-regulatory code(s) of ethics	<b>25%</b>

## EQUALITY OF ACCESS



Consultation and Public Participation in Decision-making	<b>33%</b>
Advisory / Expert Group Composition	<b>0%</b>

